Writ Petition No. 450/1988

The Goa Foundation; Francisco Joaquim das Dores Barreto
V/s
M/s Zuari Agro Chemicals Ltd.; The Chief Inspector of Factories and Boilers; The Goa State Pollution Control Board; The Central Pollution Control Board; State of Goa; Union of India; The Appellate Authority

Issue: The petitioners alleged that Zuari Agro Chemicals Ltd. (ZAC) was discharging untreated effluents into the sea and poisoning the local waters due to its fertilizer plant. The Petioners alleged that these effluents seeped through the sub-soil and polluted the drinking water, including Dorval Springs, owned and used by Petitioner No. 2 (Francisco Barreto) as well as the local population.

The Goa Foundation also alleged that the rich fertile land near Respondent No. 1's plant was completely destroyed by its untreated effluents. As a result the production of coconut and rice fell drastically. Furthermore, the untreated effluents flowed through the storm water drains that emptied into Poim Creek, once a rich source of marine food, and completely contaminated it. These same effluents then flowed to Cola Bay in the Arabian Sea and decimated the fish populations. The Petitioners alleged that the ZAC required approval from the authorities to discharge effluents into the sea.

Moreover, both the Central Pollution Control Board and the State Pollution Control Board failed in their statutory duty to prosecute ZAC for its failure to adhere to the Minimal National Standards (MINAS) for the discharge of effluents. Additionally, the Central Board had permitted the ZAC to dismantle its two-kilometer effluent discharge pipeline into the sea to replace it with a mere seventy-meter pipeline without consulting the National Institute of Oceanography, on whose recommendations the two-kilometer pipeline was installed.

To compound matters, no minimum national standards were set with regard to the emission of ammonia, so the Goa State Pollution Control Board arbitrarily set permissible limits for emission of ammonia that the petitioners alleged were unsafe. At any rate, Respondent No. 1 did not comply with these standards.

In 1987 the Goa Government requested the Karnataka Task Force on Safety in Hazardous Industries to survey the manufacturing and handling capabilities of ZAC. The Task Force examined ZAC's ammonia storage facilities and noted that a small pipe leading from the base of the hortonsphere, in which ammonia was stored, was covered with slime and a thick growth of algae. The Task Force was unable to ascertain the condition of the piping, but noted that the rupture of the pipe would result in large quantities of ammonia being released. Accordingly the Task Force recommended that a detailed examination of the hortonsphere was required. Pursuant to the recommendation of the Task Force, the Chief Inspector of Factories and Boilers (CIF) issued a notice dated 13/4/1987 to Respondent No. 1 under section 40 (2) of the Factories Act, 1948 to stop pumping ammonia to the hortonsphere; empty the hortonsphere; hydraulically test the hortonsphere and the fittings connected to it; and discontinue the secondary reformer from the process to repair it.

Instead of complying with the direction ZAC commenced construction of a second hortonsphere without obtaining the requisite approval from the Chief Inspector, nor was an investigation by the Site Appraisal Committee, as mandated by Section 41-A of the Factories Act, 1948, conducted. Its explanation was that once the second one was commissioned the first one could be examined as per the direction of the CIF.

The Goa Foundation alleged that ZAC built the second hortonsphere to enhance the capacity of liquid ammonia from 3,500 tons to 7,000 tons so as to double its production of fertilizer, rather than to provide an alternate storage tank, as falsely claimed by ZAC.

Several applications were moved from time to time to obtain reliefs in regard to the operations of the fertilizer plant.

Due to the petition the CPCB fixed the standards for discharge of ammonia for the whole country.

Interim Order:

23/8/1996: The National Environmental Engineering Research Institute is directed to visit Respondent No. 1's Fertilizer Factory and submit a report regarding its compliance with the statutory requirements of the Air Pollution Control Act, 1981; the Water Pollution Control Act, 1974; the Factory Act, 1948; and the Environment Protection Act, 1986.

The NEERI is also directed to make recommendations to this Court on making the environment Respondent No.1 safer, submit a report on the effects the two hortonspheres on public safety and the environment.

The Petitioners are to bear the costs incurred by the NEERI to undertake its investigation. Ultimately the Court will decide which of the parties is to bear the costs of the investigation.

(This order could not be complied with as NEERI asked for Rs. 10 lakhs in advance which the petitioners could not pay)

Judgment:

2/4/1998: The following directions are required to be issued in this case:

1. The Central Pollution Control Board is directed to pass the necessary orders to delegate the statutory duties under Section 16 (2)(h) & 17 (1)(i) of the Air (Prevention and Control of Pollution) Act, 1981 to the State Pollution Control Board so that after carrying out the monitoring exercise the standard of air with regard to discharge of ammonia can be fixed.

2. The State Pollution Control Board is directed to immediately proceed to monitor, without waiting for the delegation of power from the Central Pollution Control Board, the amount of ammonia vapor concentration in the ambient air around

ZAC's fertilizer factory. The State Pollution Control Board shall take samples periodically and work out the average to determine if the concentrations of ammonia vapor in the ambient air near ZAC's factory exceed 400 Parts-Per-Million (this standard had been adopted by the Kerala High Court). If the levels of ammonia vapor are abnormally high the Goa State Pollution Control Board is directed to issue orders to ZAC to take immediate remedial measures to reduce the ammonia vapor concentration. Monitoring will need to be done in all four points of the compass, particularly with reference to the wind direction.

3. Within three months from 2/4/1998, Respondent No. 1 and the Goa State Pollution Control Board shall work out an Off-Site plan for Disaster Management and report on the same to the Court after informing the petitioner. It shall be up to the Goa Foundation to move the Court for obtaining further directions if required.

4. ZAC shall file periodical reports before the Goa State Pollution Control Board and this Court at quarterly intervals on the steps taken with regard to the tests on water pollution that is to be conducted with the help of Bhabha Atomic Research Center (BARC). Upon completion of these tests, if it is determined that Respondent No. 1 is contributing to the pollution of Dorval Springs and the local drinking water appropriate steps will be taken by it to rectify the problem.

5. ZAC is directed to increase the height of its smoke stack if the Goa State Pollution Control Board finds it necessary to do so.

6. The ZAC and the State Pollution Control Board shall file miscellaneous applications in this petition to report the progress in regard to the direction so that additional directions can be passed if found necessary.

With these directions the Writ Petition is disposed of accordingly.